

TEMPORARY AGREEMENT FOR THE STATE ADMINISTRATION OF CLARK COUNTY TOURISM PROMOTION AREA FEES

THIS AGREEMENT ("Agreement") is entered into by and between the County of Clark ("County") and the State of Washington Department of Revenue ("Department") for the administration of the tourism promotion lodging charges imposed under authority of RCW 35.101.052. This Agreement is effective December 1, 2023.

RECITALS

WHEREAS the Legislature of the State of Washington by chapter 35.101 RCW authorizes a legislative authority, either singularly or through an interlocal agreement with other jurisdictions, to establish a Tourism Promotion Area ("TPA") to permit the levy of lodging charges to be expended exclusively for tourism promotion;

WHEREAS the City-County Tourism Promotion Area was established pursuant to Clark County Ordinance No. 2004-08-19, copy attached hereto, and an interlocal agreement with the City of Vancouver dated August 31, 2014;

WHEREAS chapter 35.101 RCW provides that a legislative authority imposing a lodging charge by resolution or ordinance shall contract with the Department for the administration and collection of the levy of lodging charges;

WHEREAS the legislative authority has by ordinance, copy attached hereto, indicated its intention to fix and impose a lodging charge in addition to all other sales and use taxes and any special assessments that may be levied (Ordinance No. 2004-08-19);

WHEREAS Ordinance No. 2004-08-19 provides exclusions from the TPA lodging charge which are not permitted under state law;

NOW, THEREFORE, to provide for the administration of lodging charges, the parties agree as follows:

AGREEMENT

1. **Incorporation of Recitals.** The above recitals are true and correct and are incorporated herein by this reference as if fully set forth.
2. **Functions of the Department.** The Department shall exclusively perform all functions incident to the administration and collection of the lodging charges imposed by Ordinance No. 2004-08-19 taxable by the state under chapter 82.08 RCW.

The Department will collect TPA charges described under Ordinance No. 2004-08-19 until December 31, 2024, to allow the County or any other party to seek corrective legislation to chapter 35.101 RCW, or to permit local jurisdictions to adopt exclusions according to their unique geographic and economic needs.

In the event corrective legislation is not enacted by December 31, 2024, the County shall amend Ordinance No. 2004-08-19, or adopt another ordinance which does not include exclusions not permitted under existing state law. The Department will not enter into a new agreement to collect the TPA charges for the County until the nonconforming ordinance is cured.

3. **Collection Not Authorized.** Pursuant to RCW 35.101.050, the Department is not authorized or required to administer and collect on behalf of the County any charge for which there are more than six classifications.

4. **New or Additional Legislation.** In addition to the Ordinance attached hereto, the County shall provide the Department with copies of any new and/or additional ordinances imposing any new charges or changing the rate of any charge. Such copies shall be provided to the Department no later than 75 days prior to the effective date of the ordinance.

5. **Collection of Lodging Charges.** The Department shall collect the lodging charges by the end of the following month after the due date of the taxable period for which lodging charges are imposed pursuant to the ordinance. In accordance with RCW 35.101.090, the charges so collected shall be deposited by the Department in the local tourism promotion account in the custody of the state treasurer. The Department shall provide the state treasurer with instructions on the proper monthly distribution of the deposited funds in accordance with RCW 35.101.100.

6. **Rules and Regulations Adopted by the Department.** Any specific rules and regulations adopted by the Department to facilitate the administration and distribution of the lodging charges shall be in accordance with the State Administrative Procedure Act and chapter 35.101 RCW. Until specific rules and regulations are adopted, the Department shall apply the provisions contained in chapters 82.03, 82.08, 82.12, 82.14, and 82.32 RCW, as the same exist or may hereafter be amended and insofar as the same are relevant to lodging charges. Such provisions shall have full force and effect of Department rules when applied to lodging charges.

7. **Uniform Collection.** The Department performs its duties hereunder so that as far as possible the lodging charges shall be administered and collected uniformly with the state's sales and use taxes.

8. **Refunds or Credits.** Any refunds or credits the Department finds are owed relating to the lodging charges shall be refunded to the taxpayer from the County's portion of the local tourism promotion account.

9. **Notification of Error of Fund Distribution.** Either party shall have six months from the date funds are distributed by the state treasurer to notify the other party in writing of any error in the amount of distributed funds. The party receiving such notice shall have sixty (60) days to review the claim. Upon agreement of the parties, the Department shall deposit any necessary additional funds with the state treasurer for distribution to the County; or in the event of an over-distribution, the County shall return such over-distribution to the Department. If the County and the Department cannot reach an agreement, the parties agree to attempt mediation or other dispute resolution process prior to instigating litigation in Superior Court.

10. **Disclosure of Taxpayer Information, Documentation and Reports.** The Department shall provide taxpayer information, documentation, and reports to the County, in accordance

with the disclosure limitations of RCW 82.32.330. The County shall require its authorized representatives that have access to confidential taxpayer information to sign a Department "Confidentiality and Non-Disclosure Agreement" and shall ensure such representatives comply with RCW 82.32.330.

11. **Parties' Communication and Cooperation.** The parties agree to establish and maintain open lines of communication and to work cooperatively to improve administration and public understanding of the lodging charges (special assessments). Either party may initiate a meeting, to be held at a mutually convenient time and place, to share information and to discuss matters related to administration and collection of the lodging charges.

12. **Disputes.** In the event a dispute arises under this Agreement that cannot be resolved by mutual agreement of the parties, either party may elect mediation in which the Department and the County shall each individually appoint one member to a Dispute Board and those members shall select a third member. The Dispute Board shall evaluate the dispute and make a written determination after considering the relevant facts and legal authorities. The Dispute Board's determination shall be given significant weight by both parties who will meet after the determination is issued to resolve the dispute. If a resolution is not reached, the determination of the Dispute Board shall be admissible in any future legal proceeding between the parties concerning the dispute. Each party shall be responsible for a proportionate share of the costs of the member of the Dispute Board. This remedy is not intended to be exclusive of other remedies existing in law, by statute, or otherwise.

No suit, action, or proceeding of any kind, type, or nature whatsoever arising out of or in any way relating to this Agreement will be commenced by the County or the Department other than in the Superior Court of Thurston County, Washington.

13. **Indemnification.** To the extent permitted by law, the County agrees to indemnify, defend, and hold harmless the Department for the State of Washington from claims that challenge the authority of the County to impose lodging charges pursuant to the Ordinance. The County agrees that in the event there shall be a legal challenge to the Ordinance or resolutions, the Department shall not be obligated to represent the County or otherwise defend its position in any proceeding relating to such challenge.

14. **Effective Date.** This Agreement shall take effect at 12:01 AM, December 1, 2023 and shall thereafter terminate on December 31, 2024.

15. **Waiver.** Any failure by any party to insist upon strict performance of any provision of this Agreement shall not be deemed a waiver of the right to require future strict performance of such provision. No failure or delay in exercising any right or remedy hereunder shall be deemed a waiver of such right or remedy. No term or condition of this Agreement shall be waived, modified or deleted except by an instrument, in writing, signed by personnel authorized to bind each of the parties.

16. **Modification.** This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties. The parties to this Agreement will notify each other in a timely manner when they find it necessary to request an amendment to this Agreement.

17. **Entire Agreement.** This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

18. **Counterparts.** This agreement may be executed in two or more counterparts, each of which shall be deemed an original and which together constitute one and the same.

IN WITNESS WHEREOF, the State of Washington, Department of Revenue, and the County of Clark have executed this contract as of the day and year written below.

Attest:

Date

SR ASD OPS, Department of Revenue


COUNTY COUNCIL
CLARK COUNTY, WASHINGTON

Nov. 14, 2023

Attest:


Clerk to the Council

By: 
Karen Dill Bowerman, Chair


By: 
Glen Yung, Councilor


By: absent
Michelle Belkot, Councilor

Approved as to Form Only:
Anthony F. Golik

Prosecuting Attorney

By: 

By: 
Gary Medvigy, Councilor

By: 
Sue Marshall, Councilor



Approved as to Form only:
Andrew Krawczyk, Assistant Attorney General